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# Title 61, Chapter 1, Utah Uniform Securities Act

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## **61-1-1. Fraud unlawful.**

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly to:

- (1) employ any device, scheme, or artifice to defraud;
- (2) make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

## **61-1-10. Registration by qualification.**

(1) Application may be made to register any security by qualification.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Subsection 61-1-11(3) and the consent to service of process required by Section 61-1-26:

(a) with respect to the issuer and any significant subsidiary:

- (i) its name, address, and form of organization;
- (ii) the state or foreign jurisdiction and date of its organization;
- (iii) the general character and location of its business;
- (iv) a description of its physical properties and equipment; and
- (v) a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(b) with respect to every director and officer of the issuer or person occupying a similar status or performing similar functions:

- (i) his name, address, and principal occupation for the past five years;
- (ii) the amount of securities of the issuer held by him as of a specified date within 30 days of the filing of the registration statement;
- (iii) the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and

(iv) a description of any material interest in any material transaction with the issuer or any significant subsidiary affected within the past three years or proposed to be affected;

(c) with respect to persons covered by Subsection (2)(b), the remuneration paid during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, together with all predecessors, parents, subsidiaries, and affiliates, to all those persons in the aggregate;

(d) with respect to any person owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer, the information specified in Subsection (2)(b) other than the person's occupation;

(e) with respect to every promoter if the issuer was organized within the past three years, the information specified in Subsection (2)(b), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for any such payment;

(f) with respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution:

- (i) the person's name and address;
- (ii) the amount of securities of the issuer held by the person as of the date of filing of the registration statement;
- (iii) a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and
- (iv) a statement of the person's reasons for making the offering;

(g) the capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else, for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(h) (i) the kind and amount of securities to be offered;

(ii) the proposed offering price or the method by which it is to be computed;

(iii) any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class;

(iv) the basis upon which the offering is to be made if otherwise than for cash;

(v) the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts;

(vi) the estimated amounts of other selling expenses, including legal, engineering, and accounting charges;

(vii) the name and address of every underwriter and every recipient of a finder's fee;

(viii) a copy of any underwriting or selling-group agreement under which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and

(ix) a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

- (i) (i) the estimated cash proceeds to be received by the issuer from the offering;
  - (ii) the purposes for which the proceeds are to be used by the issuer;
  - (iii) the amount to be used for each purpose;
  - (iv) the order or priority in which the proceeds will be used for the purposes stated;
  - (v) the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and
  - (vi) if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition, including the cost of borrowing money to finance the acquisition;
  - (j) a description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such option held or to be held by every person required to be named in Subsection (2)(b), (d), (e), (f), or (h) and by any person who holds or will hold 10% or more in the aggregate of any such options;
  - (k) (i) the dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and
  - (ii) a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets, including any such litigation or proceeding known to be contemplated by governmental authorities;
  - (l) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;
  - (m) (i) a specimen copy of the security being registered;
  - (ii) a copy of the issuer's articles of incorporation, and bylaws, if any, or their substantial equivalents, as currently in effect; and
  - (iii) a copy of any indenture or other instrument covering the security to be registered;
  - (n) a signed or conformed copy of an opinion of counsel as to the legality of the security being registered, with an English translation if it is in a foreign language, which shall state whether the security when sold will be legally issued, fully paid, and nonassessable, and if a debt security, a binding obligation of the issuer;
  - (o) the written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if that person is named as having prepared or certified a report or valuation, other than a public and official document or statement, which is used in connection with the registration statement;
  - (p) (i) a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement;
  - (ii) a profit and loss statement and analysis of retained earnings for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three years; and
  - (iii) if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and
  - (q) such additional information or verification of any statement as the division requires by rule or order.
- (3) A registration statement under this section becomes effective when the division so orders.
- (4) As a condition of registration under this section, a prospectus containing the information, but not containing copies of contracts or agreements specified in Subsections (2)(a) through (k) and (p) shall be sent or given to each person to whom an offer is made before or concurrently with:
- (a) the first written offer made to the person, otherwise than by means of a public advertisement, by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;
  - (b) the confirmation of any sale made by or for the account of any such person;
  - (c) payment pursuant to any such sale; or
  - (d) delivery of the security pursuant to any such sale, whichever occurs first.

#### **61-1-11. Provisions applicable to registration generally.**

- (1) A registration statement may be filed by the issuer, another person on whose behalf the offering is to be made, or a licensed broker-dealer.
- (2) A person filing a registration statement shall pay a filing fee as determined under Section 61-1-18.4.
- (3) A registration statement shall specify:
  - (a) the amount of securities to be offered in this state;
  - (b) the states in which a registration statement or similar document in connection with the offering is or is to be filed; and
  - (c) an adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by a court or the Securities and Exchange Commission.
- (4) A document filed under this chapter or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.
- (5) The division may permit the omission of an item of information or document from a registration statement.
- (6) In the case of a nonissuer distribution, information may not be required under Subsection (9) or Section 61-1-10 unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

- (7) (a) The division may require as a condition of registration by qualification or coordination:
- (i) that security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to a person for a consideration other than cash, be deposited in escrow; and
  - (ii) that the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.
- (b) The division may determine the conditions of an escrow or impounding required by this Subsection (7), but it may not reject a depository solely because of location in another state.
- (8) (a) A registration statement is effective for one year from its effective date.
- (b) All outstanding securities of the same class as a registered security are considered to be registered for the purpose of a nonissuer transaction:
- (i) so long as the registration statement is effective; and
  - (ii) between the 30th day after the entry of a stop order suspending or revoking the effectiveness of the registration statement under Section 61-1-12, if the registration statement did not relate in whole or in part to a nonissuer distribution, and one year from the effective date of the registration statement.
- (c) A registration statement may not be withdrawn for one year from its effective date if a security of the same class is outstanding.
- (d) A registration statement may be withdrawn otherwise only in the discretion of the division.
- (9) So long as a registration statement is effective and the offering is not completely sold, the division may require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.
- (10) (a) A registration statement may be amended after its effective date so as to increase the securities specified to be offered and sold, if the public offering price and underwriters' discounts and commissions are not changed from the respective amounts of which the division was informed.
- (b) The amendment becomes effective when the division so orders.
- (c) A person filing an amendment shall pay a registration fee as determined under Section 61-1-18.4 with respect to the additional securities proposed to be offered.
- (d) The amendment relates back to the date of the sale of the additional security being registered, provided that within six months of the date of the sale the amendment is filed and the additional registration fee is paid.
- (11) (a) A security that is offered or sold under Section 4(5) of the Securities Act of 1933 or that is a "mortgage related security" as defined in Section 3(a)(41) of the Securities Exchange Act of 1934 may not be exempt under Subsection 61-1-14(1)(a) to the same extent as an obligation issued by or guaranteed as to principal and interest by the United States or an agency or instrumentality of the United States. Accordingly, any such security shall comply with the applicable registration and qualification requirements set forth in this chapter.
- (b) This Subsection (11) specifically overrides the preemption of state law contained in Section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, Public Law Number 98-440.

#### **61-1-11.1. Hearings for certain exchanges of securities.**

- (1) An application may be made to the division for approval to issue securities or to deliver other consideration in exchange for:
- (a) one or more outstanding securities, claims, or property interests; or
  - (b) partly in exchange for one or more outstanding securities, claims, or property interests, and partly for cash.
- (2) The director may:
- (a) hold a hearing upon the fairness of the terms and conditions of an exchange described in Subsection (1); and
  - (b) approve or disapprove the terms and conditions of an exchange described in Subsection (1).
- (3) After conducting a hearing under this section, if the director finds that the terms and conditions of an exchange described in Subsection (1) are fair to those to whom the securities will be issued, the director may:
- (a) approve the fairness of the terms and conditions of the exchange described in Subsection (1); and
  - (b) approve the exchange described in Subsection (1).
- (4) In a hearing under this section, all persons to whom it is proposed to issue securities or to deliver other consideration in an exchange under Subsection (1) may appear.
- (5) An application under Subsection (1) shall contain the information and be accompanied by the documents required by rule or order of the division.
- (6) A person filing an application under Subsection (1) shall pay a filing fee as determined under Section 61-1-18.4.
- (7) An applicant under this section shall provide adequate notice of any hearing under this section to all persons that have a right to appear, under Subsection (4), at the hearing.
- (8) An application may be made under this section regardless of whether the security or transaction being issued is:
- (a) exempt from registration; or
  - (b) not required to be registered.
- (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may establish rules to govern the conduct of a hearing permitted by this section in accordance with Sections 61-1-18.5 and 61-1-24.
- (10) This section is intended to provide for a fairness hearing that satisfies the requirements of Securities Act of 1933, Section 3(a)(10), 15 U.S.C. Section 77c(a)(10), or any comparable section that may subsequently be enacted.

#### **61-1-12. Denial, suspension, and revocation of registration.**

- (1) Upon approval by a majority of the commission, the director, by means of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, may issue a stop order that denies effectiveness to, or suspends or revokes the effectiveness of, any securities registration statement and may impose a fine if the director finds that the order is in the public interest and that:
- (a) the registration statement, as of its effective date or as of any earlier date in the case of an order denying effectiveness, or an amendment under Subsection 61-1-11(10) as of its effective date, or a report under Subsection 61-1-11(9), is incomplete in a material respect, or contains a statement that was, in the light of the circumstances under which it was made, false or misleading with respect to a material fact;
  - (b) this chapter, or a rule, order, or condition lawfully imposed under this chapter, is willfully violated, in connection with the offering, by:
    - (i) the person filing the registration statement;
    - (ii) the issuer, a partner, officer, or director of the issuer, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or
    - (iii) an underwriter;
  - (c) subject to Subsection (5), the security registered or sought to be registered is the subject of an administrative stop order or similar order, or a permanent or temporary injunction of a court of competent jurisdiction entered under another federal or state act applicable to the offering;
  - (d) the issuer's enterprise or method of business includes or would include activities that are illegal where performed;
  - (e) the offering has worked or tended to work a fraud upon purchasers or would so operate;
  - (f) the offering is or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;
  - (g) when a security is sought to be registered by coordination, there is a failure to comply with the undertaking required by Subsection 61-1-9(2)(d); or
  - (h) the applicant or registrant has failed to pay the proper filing fee.
- (2) The director may enter an order under this section but may vacate the order if the director finds that the conditions that prompted its entry have changed or that it is otherwise in the public interest to do so.
- (3) The director may not issue a stop order against an effective registration statement on the basis of a fact or transaction known to the division when the registration statement became effective unless the proceeding is instituted within the 120 days after the day on which the registration statement becomes effective.
- (4) A person may not be considered to have violated Section 61-1-7 or 61-1-15 by reason of an order or sale effected after the entry of an order under this section if that person proves by a preponderance of the evidence that the person did not know, and in the exercise of reasonable care could not have known, of the order.
- (5) (a) The director may not commence agency action against an effective registration statement under Subsection (1)(c) more than one year from the day on which the order or injunction on which the director relies is issued.
- (b) The director may not enter an order under Subsection (1)(c) on the basis of an order or injunction entered under the securities act of another state unless that order or injunction is issued on the basis of facts that would constitute a ground for a stop order under this section at the time the director commences the agency action.

### **61-1-13. Definitions.**

- (1) As used in this chapter:
- (a) "Affiliate" means a person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with a person specified.
  - (b) (i) "Agent" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.
  - (ii) "Agent" does not include an individual who represents:
    - (A) an issuer, who receives no commission or other remuneration, directly or indirectly, for effecting or attempting to effect purchases or sales of securities in this state, and who effects transactions:
      - (I) in securities exempted by Subsection 61-1-14(1)(a), (b), (c), or (g);
      - (II) exempted by Subsection 61-1-14(2);
      - (III) in a covered security as described in Sections 18(b)(3) and 18(b)(4)(D) of the Securities Act of 1933; or
      - (IV) with existing employees, partners, officers, or directors of the issuer; or
    - (B) a broker-dealer in effecting transactions in this state limited to those transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934.
  - (iii) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if the partner, officer, director, or person otherwise comes within the definition of "agent."
  - (iv) "Agent" does not include a person described in Subsection (3).
  - (c) (i) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.
  - (ii) "Broker-dealer" does not include:
    - (A) an agent;
    - (B) an issuer;
    - (C) a depository institution or trust company;
    - (D) a person who has no place of business in this state if:

- (I) the person effects transactions in this state exclusively with or through:
  - (Aa) the issuers of the securities involved in the transactions;
  - (Bb) other broker-dealers;
  - (Cc) a depository institution, whether acting for itself or as a trustee;
  - (Dd) a trust company, whether acting for itself or as a trustee;
  - (Ee) an insurance company, whether acting for itself or as a trustee;
  - (Ff) an investment company, as defined in the Investment Company Act of 1940, whether acting for itself or as a trustee;
  - (Gg) a pension or profit-sharing trust, whether acting for itself or as a trustee; or
  - (Hh) another financial institution or institutional buyer, whether acting for itself or as a trustee; or
- (II) during any period of 12 consecutive months the person does not direct more than 15 offers to sell or buy into this state in any manner to persons other than those specified in Subsection (1)(c)(ii)(D)(I), whether or not the offeror or an offeree is then present in this state;
- (E) a general partner who organizes and effects transactions in securities of three or fewer limited partnerships, of which the person is the general partner, in any period of 12 consecutive months;
- (F) a person whose participation in transactions in securities is confined to those transactions made by or through a broker-dealer licensed in this state;
- (G) a person who is a principal broker or associate broker licensed in this state and who effects transactions in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;
- (H) a person effecting transactions in commodity contracts or commodity options;
- (I) a person described in Subsection (3); or
- (J) other persons as the division, by rule or order, may designate, consistent with the public interest and protection of investors, as not within the intent of this Subsection (1)(c).
- (d) "Buy" or "purchase" means a contract for purchase of, contract to buy, or acquisition of a security or interest in a security for value.
- (e) "Commission" means the Securities Commission created in Section 61-1-18.5.
- (f) "Commodity" means, except as otherwise specified by the division by rule:
  - (i) an agricultural, grain, or livestock product or byproduct, except real property or a timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of the real property;
  - (ii) a metal or mineral, including a precious metal, except a numismatic coin whose fair market value is at least 15% greater than the value of the metal it contains;
  - (iii) a gem or gemstone, whether characterized as precious, semi-precious, or otherwise;
  - (iv) a fuel, whether liquid, gaseous, or otherwise;
  - (v) a foreign currency; and
  - (vi) all other goods, articles, products, or items of any kind, except a work of art offered or sold by art dealers, at public auction or offered or sold through a private sale by the owner of the work.
- (g) (i) "Commodity contract" means an account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise.
- (ii) A commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes.
- (iii) (A) A commodity contract may not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days from the payment in good funds any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.
- (B) A purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.
- (h) (i) "Commodity option" means an account, agreement, or contract giving a party to the option the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, or both whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.
- (ii) "Commodity option" does not include an option traded on a national securities exchange registered:
  - (A) with the Securities and Exchange Commission; or
  - (B) on a board of trade designated as a contract market by the Commodity Futures Trading Commission.
- (i) "Depository institution" is as defined in Section 7-1-103.
- (j) "Director" means the director of the division appointed in accordance with Section 61-1-18.
- (k) "Division" means the Division of Securities established by Section 61-1-18.
- (l) "Executive director" means the executive director of the Department of Commerce.
- (m) "Federal covered adviser" means a person who:
  - (i) is registered under Section 203 of the Investment Advisers Act of 1940; or
  - (ii) is excluded from the definition of "investment adviser" under Section 202(a)(11) of the Investment Advisers Act of

1940.

(n) "Federal covered security" means a security that is a covered security under Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section 18(b) of the Securities Act of 1933.

(o) "Fraud," "deceit," and "defraud" are not limited to their common-law meanings.

(p) "Guaranteed" means guaranteed as to payment of principal or interest as to debt securities, or dividends as to equity securities.

(q) (i) "Investment adviser" means a person who:

(A) for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities; or

(B) for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(ii) "Investment adviser" includes a financial planner or other person who:

(A) as an integral component of other financially related services, provides the investment advisory services described in Subsection (1)(q)(i) to others for compensation and as part of a business; or

(B) holds the person out as providing the investment advisory services described in Subsection (1)(q)(i) to others for compensation.

(iii) "Investment adviser" does not include:

(A) an investment adviser representative;

(B) a depository institution or trust company;

(C) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of the profession;

(D) a broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for the services;

(E) a publisher of a bona fide newspaper, news column, news letter, news magazine, or business or financial publication or service, of general, regular, and paid circulation, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(F) a person who is a federal covered adviser;

(G) a person described in Subsection (3); or

(H) such other persons not within the intent of this Subsection (1)(q) as the division may by rule or order designate.

(r) (i) "Investment adviser representative" means a partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, who:

(A) (I) is employed by or associated with an investment adviser who is licensed or required to be licensed under this chapter; or

(II) has a place of business located in this state and is employed by or associated with a federal covered adviser; and

(B) does any of the following:

(I) makes a recommendation or otherwise renders advice regarding securities;

(II) manages accounts or portfolios of clients;

(III) determines which recommendation or advice regarding securities should be given;

(IV) solicits, offers, or negotiates for the sale of or sells investment advisory services; or

(V) supervises employees who perform any of the acts described in this Subsection (1)(r)(i)(B).

(ii) "Investment adviser representative" does not include a person described in Subsection (3).

(s) "Investment contract" includes:

(i) an investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor; or

(ii) an investment by which:

(A) an offeree furnishes initial value to an offerer;

(B) a portion of the initial value is subjected to the risks of the enterprise;

(C) the furnishing of the initial value is induced by the offerer's promises or representations that give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise; and

(D) the offeree does not receive the right to exercise practical or actual control over the managerial decisions of the enterprise.

(t) "Isolated transaction" means not more than a total of two transactions that occur anywhere during six consecutive months.

(u) (i) "Issuer" means a person who issues or proposes to issue a security or has outstanding a security that it has issued.

(ii) With respect to a preorganization certificate or subscription, "issuer" means the one or more promoters of the person to be organized.

(iii) "Issuer" means the one or more persons performing the acts and assuming duties of a depositor or manager under the provisions of the trust or other agreement or instrument under which the security is issued with respect to:

(A) interests in trusts, including collateral trust certificates, voting trust certificates, and certificates of deposit for securities; or

(B) shares in an investment company without a board of directors.

(iv) With respect to an equipment trust certificate, a conditional sales contract, or similar securities serving the same purpose, "issuer" means the person by whom the equipment or property is to be used.

- (v) With respect to interests in partnerships, general or limited, "issuer" means the partnership itself and not the general partner or partners.
- (vi) With respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payment out of production under the titles or leases, "issuer" means the owner of the title or lease or right of production, whether whole or fractional, who creates fractional interests therein for the purpose of sale.
- (v) (i) "Life settlement interest" means the entire interest or a fractional interest in any of the following that is the subject of a life settlement:
  - (A) a policy; or
  - (B) the death benefit under a policy.
- (ii) "Life settlement interest" does not include the initial purchase from the owner by a life settlement provider.
- (w) "Nonissuer" means not directly or indirectly for the benefit of the issuer.
- (x) "Person" means:
  - (i) an individual;
  - (ii) a corporation;
  - (iii) a partnership;
  - (iv) a limited liability company;
  - (v) an association;
  - (vi) a joint-stock company;
  - (vii) a joint venture;
  - (viii) a trust where the interests of the beneficiaries are evidenced by a security;
  - (ix) an unincorporated organization;
  - (x) a government; or
  - (xi) a political subdivision of a government.
- (y) "Precious metal" means the following, whether in coin, bullion, or other form:
  - (i) silver;
  - (ii) gold;
  - (iii) platinum;
  - (iv) palladium;
  - (v) copper; and
  - (vi) such other substances as the division may specify by rule.
- (z) "Promoter" means a person who, acting alone or in concert with one or more persons, takes initiative in founding or organizing the business or enterprise of a person.
- (aa) (i) Except as provided in Subsection (1)(aa)(ii), "record" means information that is:
  - (A) inscribed in a tangible medium; or
  - (B) (I) stored in an electronic or other medium; and
  - (II) retrievable in perceivable form.
- (ii) This Subsection (1)(aa) does not apply when the context requires otherwise, including when "record" is used in the following phrases:
  - (A) "of record";
  - (B) "official record"; or
  - (C) "public record."
- (bb) (i) "Sale" or "sell" includes a contract for sale of, contract to sell, or disposition of, a security or interest in a security for value.
- (ii) "Offer" or "offer to sell" includes an attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.
- (iii) The following are examples of the definitions in Subsection (1)(bb)(i) or (ii):
  - (A) a security given or delivered with or as a bonus on account of a purchase of a security or any other thing, is part of the subject of the purchase, and is offered and sold for value;
  - (B) a purported gift of assessable stock is an offer or sale as is each assessment levied on the stock;
  - (C) an offer or sale of a security that is convertible into, or entitles its holder to acquire or subscribe to another security of the same or another issuer is an offer or sale of that security, and also an offer of the other security, whether the right to convert or acquire is exercisable immediately or in the future;
  - (D) a conversion or exchange of one security for another constitutes an offer or sale of the security received in a conversion or exchange, and the offer to buy or the purchase of the security converted or exchanged;
  - (E) securities distributed as a dividend wherein the person receiving the dividend surrenders the right, or the alternative right, to receive a cash or property dividend is an offer or sale;
  - (F) a dividend of a security of another issuer is an offer or sale; or
  - (G) the issuance of a security under a merger, consolidation, reorganization, recapitalization, reclassification, or acquisition of assets constitutes the offer or sale of the security issued as well as the offer to buy or the purchase of a security surrendered in connection therewith, unless the sole purpose of the transaction is to change the issuer's domicile.
- (iv) The terms defined in Subsections (1)(bb)(i) and (ii) do not include:
  - (A) a good faith gift;
  - (B) a transfer by death;
  - (C) a transfer by termination of a trust or of a beneficial interest in a trust;

(D) a security dividend not within Subsection (1)(bb)(iii)(E) or (F); or

(E) a securities split or reverse split.

(cc) "Securities Act of 1933," "Securities Exchange Act of 1934," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after the effective date of this chapter.

(dd) "Securities Exchange Commission" means the United States Securities Exchange Commission created by the Securities Exchange Act of 1934.

(ee) (i) "Security" means a:

- (A) note;
- (B) stock;
- (C) treasury stock;
- (D) bond;
- (E) debenture;
- (F) evidence of indebtedness;
- (G) certificate of interest or participation in a profit-sharing agreement;
- (H) collateral-trust certificate;
- (I) preorganization certificate or subscription;
- (J) transferable share;
- (K) investment contract;
- (L) burial certificate or burial contract;
- (M) voting-trust certificate;
- (N) certificate of deposit for a security;
- (O) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;
- (P) commodity contract or commodity option;
- (Q) interest in a limited liability company;
- (R) life settlement interest; or
- (S) in general, an interest or instrument commonly known as a "security," or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase an item listed in Subsections (1)(ee)(i)(A) through (R).

(ii) "Security" does not include:

- (A) an insurance or endowment policy or annuity contract under which an insurance company promises to pay money in a lump sum or periodically for life or some other specified period;
- (B) an interest in a limited liability company in which the limited liability company is formed as part of an estate plan where all of the members are related by blood or marriage, or the person claiming this exception can prove that all of the members are actively engaged in the management of the limited liability company; or
- (C) (I) a whole long-term estate in real property;
- (II) an undivided fractionalized long-term estate in real property that consists of 10 or fewer owners; or
- (III) an undivided fractionalized long-term estate in real property that consists of more than 10 owners if, when the real property estate is subject to a management agreement:
  - (Aa) the management agreement permits a simple majority of owners of the real property estate to not renew or to terminate the management agreement at the earlier of the end of the management agreement's current term, or 180 days after the day on which the owners give notice of termination to the manager;
  - (Bb) the management agreement prohibits, directly or indirectly, the lending of the proceeds earned from the real property estate or the use or pledge of its assets to a person or entity affiliated with or under common control of the manager; and
  - (Cc) the management agreement complies with any other requirement imposed by rule by the Real Estate Commission under Section 61-2f-103.

(iii) For purposes of Subsection (1)(ee)(ii)(B), evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company, or the right to participate in management, may not establish, without more, that all members are actively engaged in the management of the limited liability company.

(ff) "State" means a state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

(gg) (i) "Undivided fractionalized long-term estate" means an ownership interest in real property by two or more persons that is a:

- (A) tenancy in common; or
- (B) any other legal form of undivided estate in real property including:
  - (I) a fee estate;
  - (II) a life estate; or
  - (III) other long-term estate.
- (ii) "Undivided fractionalized long-term estate" does not include a joint tenancy.
- (hh) "Whole long-term estate" means a person owns or persons through joint tenancy own real property through:
  - (i) a fee estate;
  - (ii) a life estate; or
  - (iii) other long-term estate.
- (ii) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive of legal holidays listed in Section 63G-1-301.



(2) A term not defined in this section shall have the meaning as established by division rule. The meaning of a term neither defined in this section nor by rule of the division shall be the meaning commonly accepted in the business community.

(3) (a) This Subsection (3) applies to:

- (i) the offer or sale of a real property estate exempted from the definition of security under Subsection (1)(ee)(ii)(C); or
- (ii) the offer or sale of an undivided fractionalized long-term estate that is the offer of a security.

(b) A person who, directly or indirectly receives compensation in connection with the offer or sale as provided in this Subsection (3) of a real property estate is not an agent, broker-dealer, investment adviser, or investment adviser representative under this chapter if that person is licensed under Chapter 2f, Real Estate Licensing and Practices Act, as:

- (i) a principal broker;
- (ii) an associate broker; or
- (iii) a sales agent.

(4) The list of real property estates excluded from the definition of securities under Subsection (1)(ee)(ii)(C) is not an exclusive list of real property estates or interests that are not a security.

#### **61-1-14. Exemptions.**

(1) The following securities are exempt from Sections 61-1-7 and 61-1-15:

(a) a security, including a revenue obligation, issued or guaranteed by the United States, a state, a political subdivision of a state, or an agency or corporate or other instrumentality of one or more of the foregoing, or a certificate of deposit for any of the foregoing;

(b) a security issued or guaranteed by Canada, a Canadian province, a political subdivision of a Canadian province, an agency or corporate or other instrumentality of one or more of the foregoing, or another foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(c) a security issued by and representing an interest in or a debt of, or guaranteed by, a depository institution organized under the laws of the United States, or a depository institution or trust company supervised under the laws of a state;

(d) a security issued or guaranteed by a public utility or a security regulated in respect of its rates or in its issuance by a governmental authority of the United States, a state, Canada, or a Canadian province;

(e) (i) a federal covered security specified in the Securities Act of 1933, Section 18(b)(1), 15 U.S.C. Section 77r(b)(1), or by rule adopted under that provision;

(ii) a security listed or approved for listing on another securities market specified by rule under this chapter;

(iii) any of the following with respect to a security described in Subsection (1)(e)(i) or (ii):

(A) a put or a call option contract;

(B) a warrant; or

(C) a subscription right on or with respect to the security;

(iv) an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency that is:

(A) registered under the Securities Exchange Act of 1934; and

(B) listed or designated for trading on a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934;

(v) an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or

(vi) an option or a derivative security designated by the Securities and Exchange Commission under Securities Exchange Act of 1934, Section 9(b), 15 U.S.C. Section 78i(b);

(f) (i) a security issued by a person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association; and

(ii) a security issued by a corporation organized under Title 3, Chapter 1, General Provisions Relating to Agricultural Cooperative Associations, and a security issued by a corporation to which that chapter is made applicable by compliance with Section 3-1-21;

(g) an investment contract issued in connection with an employees' stock purchase, option, savings, pension, profit-sharing, or similar benefit plan;

(h) a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940; and

(i) a security as to which the director, by rule or order, finds that registration is not necessary or appropriate for the protection of investors.

(2) The following transactions are exempt from Sections 61-1-7 and 61-1-15:

(a) an isolated nonissuer transaction, whether effected through a broker-dealer or not;

(b) a nonissuer transaction in an outstanding security, if as provided by rule of the division:

(i) information about the issuer of the security as required by the division is currently listed in a securities manual recognized by the division, and the listing is based upon such information as required by rule of the division; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there is no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security;

- (c) a nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy;
- (d) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
- (e) a transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;
- (f) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
- (g) a transaction executed by a bona fide pledgee without a purpose of evading this chapter;
- (h) an offer or sale to one of the following whether the purchaser is acting for itself or in a fiduciary capacity:
  - (i) a depository institution;
  - (ii) a trust company;
  - (iii) an insurance company;
  - (iv) an investment company as defined in the Investment Company Act of 1940;
  - (v) a pension or profit-sharing trust;
  - (vi) other financial institution or institutional investor; or
  - (vii) a broker-dealer;
- (i) an offer or sale of a preorganization certificate or subscription if:
  - (i) no commission or other remuneration is paid or given directly or indirectly for soliciting a prospective subscriber;
  - (ii) the number of subscribers acquiring a legal or beneficial interest therein does not exceed 10;
  - (iii) there is no general advertising or solicitation in connection with the offer or sale; and
  - (iv) no payment is made by a subscriber;
- (j) subject to Subsection (6), a transaction pursuant to an offer by an issuer of its securities to its existing securities holders, if:
  - (i) no commission or other remuneration, other than a standby commission is paid or given directly or indirectly for soliciting a security holder in this state; and
  - (ii) the transaction constitutes:
    - (A) the conversion of convertible securities;
    - (B) the exercise of nontransferable rights or warrants;
    - (C) the exercise of transferable rights or warrants if the rights or warrants are exercisable not more than 90 days after their issuance;
    - (D) the purchase of securities under a preemptive right; or
    - (E) a transaction other than one specified in Subsections (2)(j)(ii)(A) through (D) if:
      - (I) the division is furnished with:
        - (Aa) a general description of the transaction;
        - (Bb) the disclosure materials to be furnished to the issuer's securities holders in the transaction; and
        - (Cc) a non-refundable fee; and
      - (II) the division does not, by order, deny or revoke the exemption within 20 working days after the day on which the filing required by Subsection (2)(j)(ii)(E)(I) is complete;
  - (k) an offer, but not a sale, of a security for which a registration statement is filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending;
  - (l) a distribution of securities as a dividend if the person distributing the dividend is the issuer of the securities distributed;
  - (m) a nonissuer transaction effected by or through a registered broker-dealer where the broker-dealer or issuer files with the division, and the broker-dealer maintains in the broker-dealer's records, and makes reasonably available upon request to a person expressing an interest in a proposed transaction in the security with the broker-dealer information prescribed by the division under its rules;
  - (n) a transaction not involving a public offering;
  - (o) an offer or sale of "condominium units" or "time period units" as those terms are defined in Title 57, Chapter 8, Condominium Ownership Act, whether or not to be sold by installment contract, if the following are complied with:
    - (i) Title 57, Chapter 8, Condominium Ownership Act, or if the units are located in another state, the condominium act of that state;
    - (ii) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;
    - (iii) Title 57, Chapter 19, Timeshare and Camp Resort Act; and
    - (iv) Title 70C, Utah Consumer Credit Code;
  - (p) a transaction or series of transactions involving a merger, consolidation, reorganization, recapitalization, reclassification, or sale of assets, if the consideration for which, in whole or in part, is the issuance of securities of a person or persons, and if:
    - (i) the transaction or series of transactions is incident to a vote of the securities holders of each person involved or by written consent or resolution of some or all of the securities holders of each person involved;
    - (ii) the vote, consent, or resolution is given under a provision in:
      - (A) the applicable corporate statute or other controlling statute;
      - (B) the controlling articles of incorporation, trust indenture, deed of trust, or partnership agreement; or
      - (C) the controlling agreement among securities holders;

- (iii) (A) one person involved in the transaction is required to file proxy or informational materials under Section 14(a) or (c) of the Securities Exchange Act of 1934 or Section 20 of the Investment Company Act of 1940 and has so filed;
- (B) one person involved in the transaction is an insurance company that is exempt from filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934, and has filed proxy or informational materials with the appropriate regulatory agency or official of its domiciliary state; or
- (C) all persons involved in the transaction are exempt from filing under Section 12(g)(1) of the Securities Exchange Act of 1934, and file with the division such proxy or informational material as the division requires by rule;
- (iv) the proxy or informational material is filed with the division and distributed to all securities holders entitled to vote in the transaction or series of transactions at least 10 working days prior to any necessary vote by the securities holders or action on any necessary consent or resolution; and
- (v) the division does not, by order, deny or revoke the exemption within 10 working days after filing of the proxy or informational materials;
- (q) subject to Subsection (7), a transaction pursuant to an offer to sell securities of an issuer if:
  - (i) the transaction is part of an issue in which there are not more than 15 purchasers in this state, other than those designated in Subsection (2)(h), during any 12 consecutive months;
  - (ii) no general solicitation or general advertising is used in connection with the offer to sell or sale of the securities;
  - (iii) no commission or other similar compensation is given, directly or indirectly, to a person other than a broker-dealer or agent licensed under this chapter, for soliciting a prospective purchaser in this state;
  - (iv) the seller reasonably believes that all the purchasers in this state are purchasing for investment; and
  - (v) the transaction is part of an aggregate offering that does not exceed \$1,000,000, or a greater amount as prescribed by a division rule, during any 12 consecutive months;
- (r) a transaction involving a commodity contract or commodity option;
- (s) a transaction in a security, whether or not the security or transaction is otherwise exempt if:
  - (i) the transaction is:
    - (A) in exchange for one or more outstanding securities, claims, or property interests; or
    - (B) partly for cash and partly in exchange for one or more outstanding securities, claims, or property interests; and
  - (ii) the terms and conditions are approved by the director after a hearing under Section 61-1-11.1;
  - (t) a transaction incident to a judicially approved reorganization in which a security is issued:
    - (i) in exchange for one or more outstanding securities, claims, or property interests; or
    - (ii) partly for cash and partly in exchange for one or more outstanding securities, claims, or property interests;
  - (u) a nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others; and
  - (v) a transaction as to which the division finds that registration is not necessary or appropriate for the protection of investors.
- (3) A person filing an exemption notice or application shall pay a filing fee as determined under Section 61-1-18.4.
- (4) Upon approval by a majority of the commission, the director, by means of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, may deny or revoke an exemption specified in Subsection (1)(f) or (g) or in Subsection (2) with respect to:
  - (a) a specific security, transaction, or series of transactions; or
  - (b) a person or issuer, an affiliate or successor to a person or issuer, or an entity subsequently organized by or on behalf of a person or issuer generally and may impose a fine if the director finds that the order is in the public interest and that:
    - (i) the application for or notice of exemption filed with the division is incomplete in a material respect or contains a statement which was, in the light of the circumstances under which it was made, false or misleading with respect to a material fact;
    - (ii) this chapter, or a rule, order, or condition lawfully imposed under this chapter has been willfully violated in connection with the offering or exemption by:
      - (A) the person filing an application for or notice of exemption;
      - (B) the issuer, a partner, officer, or director of the issuer, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the application for or notice of exemption is directly or indirectly controlled by or acting for the issuer; or
      - (C) an underwriter;
- (iii) subject to Subsection (8), the security for which the exemption is sought is the subject of an administrative stop order or similar order, or a permanent or temporary injunction or a court of competent jurisdiction entered under another federal or state act applicable to the offering or exemption;
- (iv) the issuer's enterprise or method of business includes or would include activities that are illegal where performed;
- (v) the offering has worked, has tended to work, or would operate to work a fraud upon purchasers;
- (vi) the offering is or was made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;
- (vii) an exemption is sought for a security or transaction that is not eligible for the exemption; or
- (viii) the proper filing fee, if required, has not been paid.
- (5) (a) An order under Subsection (4) may not operate retroactively.
- (b) A person may not be considered to have violated Section 61-1-7 or 61-1-15 by reason of an offer or sale effected after the entry of an order under this Subsection (5) if the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the order.

- (6) The exemption created by Subsection (2)(j) is not available for an offer or sale of a security to an existing securities holder who has acquired the holder's security from the issuer in a transaction in violation of Section 61-1-7.
- (7) As to a security, a transaction, or a type of security or transaction, the division may:
- (a) withdraw or further condition the exemption described in Subsection (2)(q); or
  - (b) waive one or more of the conditions described in Subsection (2)(q).
- (8) (a) The director may not institute a proceeding against an effective exemption under Subsection (4)(b) more than one year from the day on which the order or injunction on which the director relies is issued.
- (b) The director may not enter an order under Subsection (4)(b) on the basis of an order or injunction entered under another state act unless that order or injunction is issued on the basis of facts that would constitute a ground for a stop order under this section at the time the director enters the order.

#### **61-1-14.5. Burden of proving exemption.**

In any proceeding under this chapter, civil, criminal, administrative, or judicial, the burden of proving an exemption under Section 61-1-14 or an exception from a definition under Section 61-1-13 is upon the person claiming the exemption or exception.

#### **61-1-15. Filing of sales literature.**

The division may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser unless the security or transaction is exempted by Section 61-1-14 or is a federal covered security.

#### **61-1-15.5. Federal covered securities.**

- (1) The division by rule or order may require the filing of any of the following documents with respect to a covered security under Section 18(b)(2) of the Securities Act of 1933:
- (a) prior to the initial offer of federal covered security in this state, a notice form as prescribed by the division or all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and a filing fee as determined under Section 61-1-18.4;
  - (b) after the initial offer of such federal covered security in this state, all documents that are part of an amendment to a federal registration statement filed with the U.S. Securities and Exchange Commission under the Securities Act of 1933, which shall be filed concurrently with the division;
  - (c) a report of the value of federal covered securities offered or sold in this state, together with a filing fee as determined under Section 61-1-18.4; and
  - (d) a notice filing under this section shall be effective for one year and shall be renewed annually in order to continue to offer or sell the federal covered securities for which the notice was filed.
- (2) With respect to a security that is a covered security under Section 18(b)(4)(D) of the Securities Act of 1933, the division by rule or order may require the issuer to file a notice on SEC Form D and a consent to service of process signed by the issuer no later than 15 days after the first sale of such covered security in this state, together with a filing fee as determined under Section 61-1-18.4.
- (3) The division by rule or order may require the filing of a document filed with the Securities and Exchange Commission under the Securities Act of 1933, with respect to a covered security under Securities Act of 1933, Section 18(b)(3) or (4), together with a filing fee as determined under Section 61-1-18.4.
- (4) Upon approval by a majority of the commission, the director, by means of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, may issue a stop order suspending the offer and sale of a federal covered security, except a covered security under Section 18(b)(1) of the Securities Act of 1933, if the director finds that the order is in the public interest and there is a failure to comply with any condition established under this section.
- (5) The division by rule or order may waive any or all of the provisions of this section.

#### **61-1-16. False statements unlawful.**

It is unlawful for any person to make or cause to be made, in any document filed with the division or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

#### **61-1-17. No finding by division on merits -- Contrary representation unlawful.**

- (1) Neither the fact that an application for registration or a registration statement has been filed nor the fact that a person or security is effectively registered constitutes a finding by the division that any document filed under this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the division has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.
- (2) It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with Subsection (1).

**61-1-18. Division of Securities established -- Director -- Investigators.**

- (1) (a) There is established within the Department of Commerce a Division of Securities.
- (b) The division is under the direction and control of a director. The executive director shall appoint the director with the governor's approval.
- (c) Subject to Section 61-1-18.5, the division shall administer and enforce this chapter.
- (d) The director shall hold office at the pleasure of the governor.
- (2) The director, with the approval of the executive director, may employ the staff necessary to discharge the duties of the division or commission at salaries to be fixed by the director according to standards established by the Department of Human Resource Management.
- (3) An investigator employed pursuant to Subsection (2) who meets the training requirements of Subsection 53-13-105(3) may be designated a special function officer, as defined in Section 53-13-105, by the director, but is not eligible for retirement benefits under the Public Safety Employee's Retirement System.

**61-1-18.1. Technical experts and specialists -- Employment -- Contracts.**

The director may employ or contract with technical experts and specialists including but not limited to certified public accountants, appraisers, engineers, and tax accountants to conduct or participate in any examination, audit, investigation or proceeding.

**61-1-18.2. Budget -- Annual report.**

The director shall annually prepare and submit to the executive director:

- (1) a budget for the expenses of the division and commission for the administration and enforcement of this chapter for the next fiscal year; and
- (2) a report outlining the division's and commission's work for the preceding fiscal year.

**61-1-18.3. Information obtained by division or commission -- Use for personal benefit prohibited -- Disclosure.**

- (1) It is unlawful for an employee of the division or a member of the commission to use for personal benefit any non-public information that is filed with or obtained by the division or commission.
- (2) This chapter does not authorize the division, an employee of the division, the commission, or a member of the commission to disclose information described in Subsection (1), except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter.
- (3) No provision of this chapter either creates or derogates from a privilege that exists at common law or otherwise when documentary or other evidence is sought under subpoena directed to:
  - (a) the division;
  - (b) the commission;
  - (c) a member of the commission; or
  - (d) an employee of the division.

**61-1-18.4. Fees collected by division.**

The Division of Securities shall establish, charge, and collect fees pursuant to Section 63J-1-504, except when it can be demonstrated that the fee amount should be based on factors other than cost, for the following:

- (1) the fair and reasonable cost of any examination, audit, or investigation authorized or required by this chapter or other state law;
- (2) certificate of serving and mailing process served upon the division in any action or proceeding commenced or prosecuted in this state against any person who has appointed the division its agent as provided in Subsection 61-1-26(7); and
- (3) copies and authentication of all papers, publications, data, and other records available to the public or issued under the division's authority.

**61-1-18.5. Securities Commission -- Transition.**

- (1) (a) There is created a Securities Commission.
- (b) The division shall provide staffing to the commission.
- (2) (a) The commission shall:
  - (i) formulate and make recommendations to the director regarding policy and budgetary matters;
  - (ii) submit recommendations regarding registration requirements;
  - (iii) formulate and make recommendations to the director regarding the establishment of reasonable fees;
  - (iv) act in an advisory capacity to the director with respect to the exercise of the director's duties, powers, and responsibilities;
  - (v) conduct an administrative hearing under this chapter that is not:
    - (A) delegated by the commission to an administrative law judge or the division relating to a violation of this chapter; or
    - (B) expressly delegated to the division under this chapter;
  - (vi) except as provided in Subsection (2)(b), impose a sanction as provided in this chapter;
  - (vii) review rules made by the division for purposes of concurrence in accordance with Section 61-1-24; and
  - (viii) perform other duties as this chapter provides.
- (b) (i) The commission may delegate to the division the authority to impose a sanction under this chapter.

- (ii) If under Subsection (2)(b)(i) the commission delegates to the division the authority to impose a sanction, a person who is subject to the sanction may petition the commission for review of the sanction.
- (iii) A person who is sanctioned by the division in accordance with this Subsection (2)(b) may seek agency review by the executive director only after the commission reviews the division's action.
- (3) (a) The governor shall appoint five members to the commission with the consent of the Senate as follows:
  - (i) two members from the securities brokerage community:
    - (A) who are not from the same broker-dealer or affiliate; and
    - (B) who have at least five years prior experience in securities matters;
  - (ii) one member from the securities section of the Utah State Bar:
    - (A) whose practice primarily involves:
      - (I) corporate securities; or
      - (II) representation of plaintiffs in securities cases;
    - (B) who does not routinely represent clients involved in:
      - (I) civil or administrative litigation with the division; or
      - (II) criminal cases brought under this chapter; and
    - (C) who has at least five years prior experience in securities matters;
  - (iii) one member who is an officer or director of a business entity not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934; and
  - (iv) one member from the public at large who has no active participation in the securities business.
- (b) A member may not serve more than two consecutive terms.
- (4) (a) Except as required by Subsection (4)(b) and subject to Subsection (4)(c), as terms of current members expire, the governor shall appoint a new member or reappointed member to a four-year term.
- (b) Notwithstanding Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.
- (c) For purposes of making an appointment to the commission, the governor:
  - (i) shall as of May 12, 2009:
    - (A) appoint all five members of the commission; and
    - (B) stagger the terms of the five members of the commission to comply with Subsection (4)(b); and
  - (ii) may not consider the commission an extension of the previous Securities Advisory Board.
- (d) When a vacancy occurs in the membership for any reason, the governor shall appoint a replacement member for the unexpired term.
- (e) A member shall serve until the member's respective successor is appointed and qualified.
- (f) The commission shall annually select one member to serve as chair of the commission.
- (5) (a) The commission shall meet:
  - (i) at least quarterly on a regular date to be fixed by the commission; and
  - (ii) at such other times at the call of:
    - (A) the director; or
    - (B) any two members of the commission.
- (b) A majority of the commission shall constitute a quorum for the transaction of business.
- (c) An action of the commission requires a vote of a majority of members present.
- (6) A member of the commission shall, by sworn and written statement filed with the Department of Commerce and the lieutenant governor, disclose any position of employment or ownership interest that the member has with respect to an entity or business subject to the jurisdiction of the division or commission. This statement shall be filed upon appointment and must be appropriately amended whenever significant changes occur in matters covered by the statement.
- (7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (8) (a) A rule or form made by the division under this section that is in effect on May 11, 2009, is considered to have been concurred with by the commission as of May 12, 2009, until the commission acts on the rule or form.
- (b) For a civil or administrative action pending under this chapter as of May 12, 2009, brought under the authority of division under this chapter as in effect May 11, 2009 that may be brought only by the commission under this chapter as in effect on May 12, 2009:
  - (i) the action shall be considered brought by the commission; and
  - (ii) the commission may take any act authorized under this chapter regarding that action.

#### **61-1-18.6. Procedures -- Adjudicative proceedings.**

The commission and division shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding under this chapter.

#### **61-1-18.7. Funding of securities investor education and training.**

- (1) (a) There is created a restricted special revenue fund known as the "Securities Investor Education and Training Fund"

to provide revenue for educating the public and the securities industry as provided in this section.

(b) For purposes of this section, "fund" means the Securities Investor Education and Training Fund.

(2) All money received by the state by reason of civil penalties ordered and administrative fines collected pursuant to this chapter shall be deposited in the fund, and subject to the requirements of Title 51, Chapter 5, Funds Consolidation Act.

(3) A fine collected by the division after July 1, 1989, pursuant to a voluntary settlement or administrative order shall be deposited into the fund.

(4) (a) The fund shall earn interest.

(b) All interest earned on fund money shall be deposited into the fund.

(5) Notwithstanding Title 63J, Chapter 1, Budgetary Procedures Act, the director may use money in the fund, upon concurrence of the commission and the executive director of the Department of Commerce, in a manner consistent with the duties of the division and commission under this chapter and only for any or all of the following and the expense of providing them:

(a) education and training of Utah residents in matters concerning securities laws and investment decisions, by publications or presentations;

(b) education of registrants and licensees under this chapter, by:

(i) publication of this chapter and rules and policy statements and opinion letters issued under this chapter; and

(ii) sponsorship of seminars or meetings to educate registrants and licensees as to the requirements of this chapter; and

(c) investigation and litigation.

(6) If the balance in the fund exceeds \$100,000 at the close of any fiscal year, the excess shall be transferred to the General Fund.

#### **61-1-19. Investigations authorized.**

(1) (a) The division may make any public or private investigations within or without this state as the division considers necessary to determine whether a person has violated, is violating, or is about to violate this chapter or a rule or order issued under this chapter.

(b) To aid in the enforcement of this chapter or in the prescribing of rules and forms issued under this chapter, the division may require or permit a person to file a statement in writing, under oath or otherwise as to all the facts and circumstances concerning the matter to be investigated.

(c) The division may publish information concerning a violation of this chapter or the violation of a rule or order issued under this chapter.

(2) For the purpose of an investigation or proceeding under this chapter, the division, the commission, or an employee designated by the division may:

(a) administer an oath or affirmation;

(b) subpoena a witness and compel the attendance of the witness;

(c) take evidence; and

(d) require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records relevant or material to the investigation.